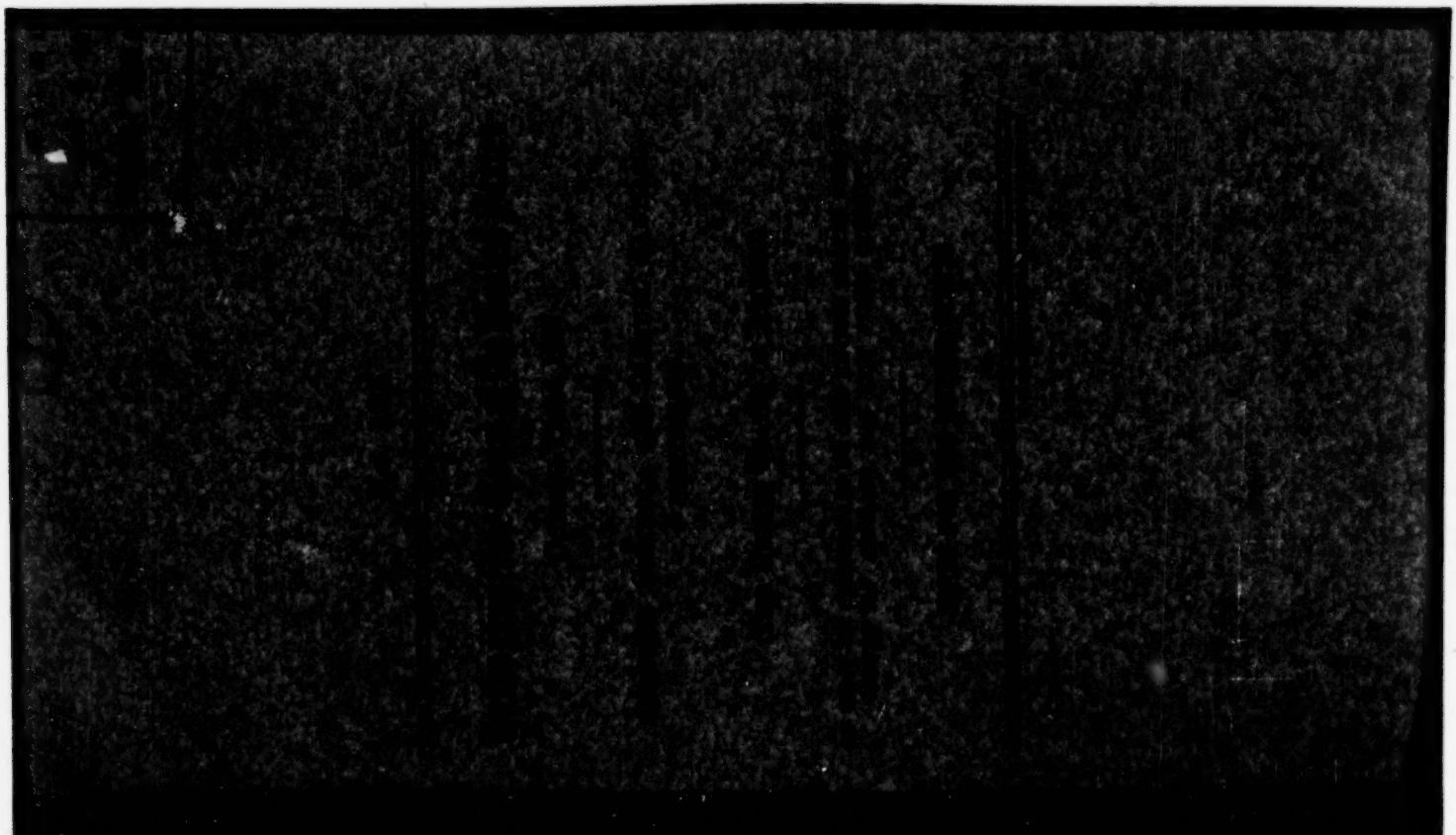

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In the Supreme Court of the United States

OCTOBER TERM, 1927

No. 195

AUGUSTIN SEGUROLA AND MANUEL SANTIAGO, PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

No opinion was filed by the District Court. The opinion of the Circuit Court of Appeals is reported in 16 F. (2d) 563. (R. 49.)

JURISDICTION

The judgment of the Circuit Court of Appeals was rendered December 18, 1926. (R. 56.) Rehearing was denied January 26, 1927. (R. 56.) Petition for writ of certiorari was filed March 16, 1927; the writ was granted April 25, 1927 (R. 57), pursuant to Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

THE QUESTIONS PRESENTED

1. Was it reversible error to refuse defendants' request for a free copy of the information?

2. Where a witness for the prosecution, to establish probable cause for search of an automobile without a warrant, testifies at the instance of the prosecution that he had information that the car was loaded with liquor, was it reversible error to refuse to allow cross-examination of the witness as to the name of his informant, and, in view of this restriction, was it reversible error to admit the liquor as evidence?

3. Was the evidence sufficient to sustain the conviction of the defendant Santiago?

STATEMENT

Petitioners were convicted under a criminal information filed in the District Court of the United States for Porto Rico, charging in the first count possession, and in the second count transportation, of intoxicating liquors in violation of the National Prohibition Act. (R. 3, 4.) The conviction on the possession count was set aside by the Circuit Court of Appeals, so only the second count is here involved. Upon arraignment petitioners waived a reading of the information and pleaded not guilty. Their counsel thereupon requested that they be furnished with a copy of the information free of charge. The request was denied by the court and an exception noted (R. 5, 25), the trial court stating that the

defendants and their counsel were free to examine the information and to make copies themselves, or have the Clerk make them on payment of his fee (R. 24).

At the trial Alfonso Ceballos, Chief of Police at Carolina, Porto Rico, testified for the prosecution that, having received a confidential telephone message that Segurola was driving a Buick automobile with a load of liquor from Luquillo to Loiza, he procured one Ismael Colon to drive him in a Ford car out to a point on the road where he awaited the appearance of the Buick machine; that when that car appeared he tried to intercept it by obstructing the road with the Ford, but Segurola operated his Buick so as to force the Ford aside, by threat of a collision (R. 14, 18), and went by at high speed; that the officer was in uniform, which Segurola must have observed (R. 19); that he followed in the Ford into Carolina, where, owing to obstacles encountered by the Buick, he managed to get around in front of it; that when Segurola saw his way blocked by the Ford he stopped the Buick, put it in reverse, and crashed into an electric post (R. 14); that Ceballos then arrested Segurola, as well as Santiago, who was sitting beside him, and that a search of the rear compartment of the Buick, which was a roadster, disclosed a number of sacks and bottles of whiskey, brandy, and gin (R. 15–19).

Upon cross-examination Ceballos was asked who gave him the information by telephone. Counsel

for the Government objected that "they are the secrets of the police force, which should not be stated in a court of justice, and the stating of the source of such information would be against public policy." The objection was sustained and an exception noted. (R. 15, 16.) Subsequently, when the liquor was offered and received in evidence (R. 23, 24), counsel for the defendants moved to "suppress the liquors as evidence," on the ground that the search was without a warrant, and did not appear to have been made upon probable cause because the seizing officer was not permitted to state the source of the telephone information which induced him to go out to look for the Buick car. The motion was overruled. No objection was ever made to the evidence of the officers and others that liquor was found in the car, and no evidence to dispute that fact was offered by the defense. At the close of the trial the jury found the defendants guilty as charged. (R. 5.) They were thereupon sentenced on the second, or transportation, count, Segurola to pay a fine of $300 and Santiago a fine of $200. (R. 7, 8.)

SUMMARY OF ARGUMENT

I. Under the Organic Act of Porto Rico the defendants were not entitled to have the Clerk of the Court furnish them free of charge a copy of the information. Their rights were satisfied by opportunity to hear it read, to make copies themselves, to examine it on file, or to have the Clerk furnish a copy on payment of his fee.

There is no reason to construe the Organic Act as entitling the accused to a free copy of the information when (prior to the Act of January 22, 1927) no such right existed in the Federal courts in continental United States.

II. The refusal to allow the prosecution's witness to be cross-examined about the name of an informer, and the refusal to suppress seized liquor as evidence, were not reversible errors.

The evidence for the prosecution that an officer received information of illegal transportation bore only on probable cause for seizure. We find some authority to support the ruling that the State's privilege as to the name of an informer may be asserted where the prosecution on direct examination brings out the fact that information was received, and the correct rule may be that even under such circumstances the name of the informer need not be disclosed unless really necessary to the investigation of the truth. There was evidence of probable cause without the evidence furnished by the informer.

The matter bore only on admissibility of evidence obtained by the search. All the testimony of witnesses as to finding the liquor in the car was received without an objection or motion to strike. The motion to suppress related only to the liquor as an exhibit, and if granted would have left undisputed evidence that liquor was illegally transported. On the record the failure to suppress the

corroborative exhibits, if error, was without prejudice.

III. The question whether there was sufficient evidence to sustain the conviction of Santiago is submitted on the decision below.

ARGUMENT

I

THE REFUSAL TO GRANT THE REQUEST FOR A FREE COPY OF THE INFORMATION WAS NOT ERROR

The defendants' request for a free copy of the information was based upon Section 2 of the Organic Act of Porto Rico (Act of March 2, 1917, c. 145, 39 Stat. 951; U. S. C., Title 48, Sec. 737), which provides:

> That in all criminal prosecutions the accused shall enjoy the right to have the assistance of counsel for his defense, to be informed of the nature and cause of the accusation, *to have a copy thereof*, to have a speedy and public trial, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor. (Italics ours.)

The request was denied by the District Judge (R. 5)—

> • • • for the reason that I know of no law requiring the same. The defendants and the attorney for the defendants are free at any time to examine the information, which is now in court, and to have copies thereof made at any time, as provided by law • • •.

Later at the trial, when the point was again raised by the defendants, the court said (R. 24):

> The objection is overruled for the reason that at the time that the defendants pleaded to the information, the information was in court and open to their inspection, and the defendants and their attorneys were informed by the court that they were at perfect liberty to examine said information in any way they desired or at perfect liberty to make copies thereof or to order the copies to be made and certified to by the clerk upon the payment of the fee as provided by law and the defendants and their attorneys have had every means of acquainting themselves with the contents of the information. The motion is overruled.

The provision in the Organic Act that the accused shall "enjoy the right * * * to have a copy" of the accusation does not mean that the copy must be furnished at the expense of the United States. Section 1033 of the Revised Statutes (U. S. C., Title 18, Sec. 562) provides:

> When any person is indicted of treason, a copy of the indictment and a list of the jury, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each juror and witness, shall be delivered to him at least three entire days before he is tried for the same. When any person is indicted of any other capital offense, such copy of the indictment and list of the jurors and witnesses shall be

> delivered to him at least two entire days before the trial.

It has been held that as this statute applies to capital offenses only, it carries the inference that copies of indictments need not be furnished at Government expense in cases not capital. (*United States* v. *Van Duzee*, 140 U. S. 169.) In the same case it was indicated that the provisions of the Sixth Amendment, to the effect that—

> In all criminal prosecutions, the accused shall enjoy the right * * * to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence,

imposed no general obligation on the part of the Government to furnish at its expense copies of indictments. If there was any obligation to furnish a free copy of the information to the accused in the present case, it was a statutory obligation and not a constitutional one, but a fair construction of the statute does not support the contention that a copy should have been furnished at the expense of the United States.

The provision of Section 2 of the Organic Act provides, in the language of the Sixth Amendment, that "the accused shall enjoy the right to have the assistance of counsel for his defense." That provision of the Constitution has never been construed to impose a general obligation on the Government

to furnish counsel at Government expense, and the like provision in Section 2 of the Organic Act has the same meaning and did not require that counsel be furnished at Government expense. The language of the Act respecting a copy of the accusation is identical. It is "the accused shall enjoy the right * * * to have a copy thereof." If the phrase first quoted does not mean that counsel must be furnished free, the latter phrase does not mean that a copy of the accusation shall be furnished free.

This construction is fortified by the fact that paragraph 6 of Section 8 of the Act of February 11, 1925 (c. 204, 43 Stat. 857, 858), relating to fees of clerks of the United States District Courts, and which is applicable to the United States District Court in Porto Rico, prior to its amendment on January 22, 1927, provided that clerks should receive "for a copy of any record, entry, or other paper, and the comparison thereof, 15 cents for each folio of one hundred words," and this has been uniformly construed to require the payment by the accused for a copy of any information or indictment except in capital cases covered by Section 1033, R. S., and that construction has received legislative recognition in the Act of January 22, 1927, c. 50, 44 Stat. 1022, 1023, amending paragraph 6 of Section 8 of the Act of February 11, 1925, relating to clerks' fees in United States District Courts, in which it is provided:

> 6. For a copy of any record, entry, or other paper, and the comparison thereof, 15 cents for each folio of one hundred words: *Provided,* That in each criminal case not provided for in section 1033 of the Revised Statutes of the United States the clerk shall furnish each defendant, upon his request, a copy of any information filed or indictment returned against him, the fees for said copy and the certificate thereto, at the rates provided for by law, to be taxed as costs; but such fees shall not be demanded of any such defendant unless and until by order, judgment, or decree of the court the costs in the case are assessed against him.

This Act applies to the United States District Court in Porto Rico, and since its passage it has been the law in Porto Rico that the accused in any criminal case is entitled upon request to receive a copy of the information or indictment without payment of fees, unless in the form of costs taxed against him after conviction.

The provisions of Section 2 of the Organic Act of Porto Rico, giving the accused the right to have a copy of the accusation, should not be construed to impliedly repeal the provision fixing fees of the clerks of the United States District Courts. It certainly was not intended to give the accused in Porto Rico, in cases not capital, greater consideration than was granted generally to those arraigned in District Courts in the continental United States.

In the case of *Logan* v. *United States*, 144 U. S. 263, the Court held that the failure to deliver a copy of the indictment as specified in Section 1033, R. S., was reversible error. We assume that if the Organic Act of Porto Rico required that a copy of the information must be delivered to the accused at the expense of the United States at least three days before the trial, the failure to comply with the statute would be reversible error, but the provision in the Organic Act that the accused should enjoy the right to have a copy should not be construed to compel its delivery at Government expense. It merely meant that the accused should have the right to make a copy or to obtain one on payment of the fees provided by the other statute relating to clerk's fees above referred to.

It is quite evident that there was no actual prejudice through failure to furnish a copy at Government expense. The information was brief and could have been copied by a scrivener in five or ten minutes, and was on file, open to inspection, all through the proceedings. The request for a copy at Government expense was obviously made not for the purpose of protecting any substantial right but to lay a technical foundation for reversal in the event of conviction. There is no suggestion that the accused was indigent or unable to pay the clerk's fee of 15 cents a folio (about 75¢) for the document requested.

II

THE REFUSAL TO ALLOW THE PROSECUTION'S WITNESS TO BE CROSS-EXAMINED AS TO THE NAME OF AN INFORMER AND THE REFUSAL TO SUPPRESS THE LIQUOR AS EVIDENCE WERE NOT REVERSIBLE ERRORS

The Chief of Police testified for the prosecution, on direct examination, that he had gone to look for Segurola in consequence of a confidential telephone communication that the latter was approaching with a load of liquor in a Buick car. This evidence, received without objection, was material only in establishing probable cause for the search of the automobile without a warrant. The refusal of the court to allow the defense on cross-examination to ask the name of the informer was based on the ground that the matter was privileged. It is well settled that the identity of an informer is a privileged matter and may not be disclosed without the consent of the State. The question of this privilege usually arises in civil cases between private persons, such as suits for malicious prosecution, where a public official is called as a witness by one of the parties, and it has sometimes arisen in criminal prosecutions where the prosecution has not opened the subject in examining its own witnesses.

Ordinarily, in a criminal prosecution, the fact that an official has been informed of the guilt of the accused is not competent or material, and it would be most unusual for the prosecution to open the doors to an inquiry on that subject by its method of examining its own witnesses.

The unusual feature of this case lies in the fact that here the prosecution, in direct examination of one of its witnesses, drew out the fact, which was material on the question of the validity of the search, that the witness had been informed that the offense was being committed. The question here is not whether such a privilege exists, but whether the prosecution, by opening the subject in direct examination of its witness, waived the privilege, and whether the rule goes to the extent of excluding the defense from cross-examining as to the identity of the informer where the fact of the information is material and has been covered by direct examination of a witness for the prosecution. We have been able to find little satisfactory authority on the point. The subject of the privilege is dealt with in Wigmore on Evidence, 2d Ed., 1923, vol. 5, Section 2374, where a large number of cases are collated. See *Worthington* v. *Scribner*, 109 Mass. 487; *Vogel* v. *Gruaz*, 110 U. S. 311; *In re Quarles* and *Butler*, 158 U. S. 532; *Marks* v. *Beyfus*, L. R. 1890, 25 Q. B. D. 494; *Humphrey* v. *Archibald*, 20 Ontario App. 267; *Regina* v. *Richardson*, 3 Foster and Finlayson, N. P. cases, 693; *Attorney General* v. *Briant*, 15 M. & W. 169; *Elrod* v. *Moss*, 278 Fed. 123, 127; *Arnstein* v. *United States*, 296 Fed. 946, 950.

One American decision has been found where it appears the prosecution went into the matter on direct examination of its witnesses. *People* v. *Laird*, 102 Mich. 135.

In *Mitrovich* v. *United States*, 15 F. (2d) 163, a criminal prosecution for maintaining a common nuisance, it is stated that a Government witness testified the place was pointed out to him by an informer, and the opinion said:

> He was then asked the name of the informer, but an objection to the question was sustained and an exception allowed.

The opinion in that case does not show that the testimony given by the Government witness that information had been given by an informer was brought out by the prosecution.

In some English cases there is a suggestion that, although the fact of receiving information may have been brought out by the prosecution, the identity of the informer may not be disclosed in cases where the disclosure of the name is not really necessary to the investigation of the truth.

In the present case the existence of probable cause for search was material, since on it depended the admissibility of all the evidence showing the transportation of liquor, and the question is whether under such circumstances the rule as to the privilege in question goes to the extent of allowing the prosecution to bring out the fact that information was given without opening the door to cross-examination as to the name of the informer.

If, as suggested in the English cases, the identity of the informer need not be disclosed unless really necessary to the investigation of the truth of the

charge, then this is a proper case to apply that principle.

In the trial of Thomas Hardy for high treason, 24 State Trials 199 (1794), Lord Chief Justice Eyre stated (p. 808):

> It is perfectly right that all opportunities should be given to discuss the truth of the evidence given against a prisoner; but there is a rule which has universally obtained on account of its importance to the public for the detection of crimes, that those persons who are the channel by means of which that detection is made, should not be unnecessarily disclosed. If it can be made appear that really and truly it is necessary to the investigation of the truth of the case that the name of the person should be disclosed, I should be very unwilling to stop it, but it does not appear to me that it is within the ordinary course to do it, or that there is any necessity for it in this particular case; all that this witness says is, I did this upon advice; I did from time to time communicate with a friend for the purpose of its being communicated to a magistrate, and in that manner it was that I came to know these transactions.

In the later case of *Marks* v. *Beyfus*, L. R. 1890, 25 Q. B. D. 494, Lord Esher announciated the same principle (p. 498):

> "*The rule clearly established and acted on is this, that in a public prosecution a witness*

can not be asked such questions as will disclose the informer, if he be a third person * * * and we think the principle of the rule applies to the case where a witness is asked if he himself is the informer." Now, this rule as to public prosecutions was founded on grounds of public policy, and if this prosecution was a public prosecution the rule attaches; I think it was a public prosecution, and that the rule applies. I do not say it is a rule which can never be departed from; if upon the trial of a prisoner the judge should be of opinion that the disclosure of the name of the informant is necessary or right in order to show the prisoner's innocence, then one public policy is in conflict with another public policy, and that which says that an innocent man is not to be condemned when his innocence can be proved is the policy that must prevail. But except in that case, this rule of public policy is not a matter of discretion; it is a rule of law, and as such should be applied by the judge at the trial, who should not treat it as a matter of discretion whether he should tell the witness to answer or not. The learned judge was, therefore, perfectly right in the present case in applying the law, and in declining to let the witness answer the questions. The result of his so deciding was, of course, that the plaintiff's cause of action, which was founded on the alleged instigation of the Director of Public Prosecutions by the defendants, failed, for there was no evidence of any such instigation. (Italics ours.)

As the question of the identity of the informer in the case at bar bore only on probable cause and not directly on guilt or innocence, the court, if it had discretion to exclude the name of the informer, wisely exercised it. Under all the circumstances of this case the inquiry as to the identity of the informer could have served no purpose other than to expose him.

It may not be necessary in this case to decide this question, and even if it were resolved against the United States the conviction should stand. The evidence as to the fact that information was given was material only as bearing on the existence of probable cause for search of the automobile, a matter to be decided by the court in ruling on objections to the admission of evidence resulting from the search. There was some evidence to establish probable cause aside from the information given by the informer. See *Carroll* v. *United States*, 267 U. S. 132.

The conduct of Segurola when the officer in uniform endeavored to stop his car in the first instance, his efforts to escape, and the other circumstances were enough to justify any reasonable man in concluding he was engaged in some unlawful enterprise.

Furthermore, the attempted cross-examination as to the name of the informer only dealt with the matter of probable cause and with the basis for the admissibility of the evidence resulting from the

search. All the testimony as to the fact of search *and the finding of* liquor in the car was offered and received without any objection from the defense. Only the admission of the liquor as an exhibit was assailed, and that by motion "to suppress the liquor as evidence" first made after it was received. If the motion had been granted, there still remained in the record—offered and received without objection—all of the testimony showing the discovery of the liquor in the car, of which the liquor itself was merely corroborative. No evidence was offered by the defense to contradict the proof that liquor was transported and found in the car. Under these circumstances, if error was made in restricting the cross-examination and in not granting the motion to suppress the liquor as an exhibit, it was error without substantial prejudice.

III

IS THE EVIDENCE SUFFICIENT TO SUSTAIN THE CONVICTION AS TO DEFENDANT SANTIAGO?

The defendant Santiago's motion for a new trial was denied by the trial court. The Circuit Court of Appeals affirmed his conviction under the second count, that of transportation. Due weight should be given the conclusion reached as to Santiago by the courts below.

Defendant Santiago accompanied Segurola on the journey from Luquillo to Carolina. He sat in the front seat with Segurola when the latter passed

and escaped the police officer on the road outside Carolina. He was with Segurola in the town of Carolina when Segurola, in an attempt to back away and escape from Ceballos, collided with an electric-light post. Defendants were arrested at the same time, and Santiago was present when the search and seizure occurred. (R. 14, 15, 17, 27, 28.)

Santiago testified that, being in Fajardo (R. 26), which is not his home, he accepted an invitation to ride to San Juan in Segurola's car. He said that he had no knowledge of the presence of liquor in the car. (R. 25.) In fact, he testified that he did not know that the police found liquor in the car; he did not even see the car being searched; he first learned of the seizure at police headquarters after the arrest. (R. 27.) This testimony is flatly refuted by the witnesses Alvarez and Ceballos. (R. 17, 28.)

The direct evidence against Santiago was slight, and while such evidence may not constitute proof of guilt, and the man might have been an innocent passenger, yet this evidence taken in conjunction with the fact of false testimony was held below to constitute sufficient evidence to justify the court in permitting the jury to pass upon his guilt or innocence. The conduct of defendant in falsely testifying is in the nature of an admission of guilt, and a jury may properly conclude from such action that a defendant is guilty. *Wilson* v. *United States*,

162 U. S. 613, 620–621; *Wigmore on Evidence*, 2nd Ed., vol. 1, Sec. 278, p. 566.

Moreover, the question of the sufficiency of the evidence as to Santiago was first raised on motion for a new trial. (R. 5, 7.) Since that motion is directed to the sound discretion of the trial court, the denial is not usually subject to review. *Holmgren* v. *United States*, 217 U. S. 509, 521.

The case against Santiago is meagre, and we do not feel justified in making a very vigorous attack on the contention that it is insufficient, or do more than submit this part of the case on the reasoning of the courts below.

Respectfully submitted.

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SEPTEMBER, 1927.

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In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 980

AUGUSTIN SEGUROLA AND MANUEL SANTIAGO, petitioners

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

No opinion was rendered by the District Court. The opinion of the Circuit Court of Appeals (R. 57) is reported in 16 F. (2d) 563.

JURISDICTION

The judgment of the Circuit Court of Appeals was rendered December 18, 1926, and rehearing was denied January 26, 1927. (R. 71.) The petition for a writ of certiorari was filed March 16, 1927.

Jurisdiction to issue the writ applied for is conferred upon this Court by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938.

STATEMENT

Petitioners were named as defendants in a criminal information filed in the District Court of the United States for Porto Rico, charging in the first count possession, and in the second count transportation, of intoxicating liquors in violation of the National Prohibition Act. (R. 3, 4.) Upon arraignment they waived a reading of the information and pleaded not guilty. Their counsel thereupon requested that they be furnished with a copy of the information free of charge. The request was denied by the court and an exception noted. (R. 5, 44.)

At the trial, Alfonso Ceballos, Chief of Police at Carolina, Porto Rico, testified for the prosecution that, having received a confidential telephone message that Segurola was driving a Buick automobile with a load of liquor from Luquillo to Loiza, he procured one Ismael Colon to drive him in a Ford car out to a point on the road where he awaited the appearance of the Buick machine; that when that car appeared he tried to intercept it but it went by at high speed; that he followed in the Ford into Carolina, where, owing to obstacles encountered by the Buick, he managed to get around in front of it;

that when Segurola saw his way blocked by the Ford he stopped the Buick, put it in reverse, and crashed into an electric post; that Ceballos then went forward and arrested Segurola, as well as Santiago, who was sitting beside him, and that a search of the rear compartment of the Buick, which was a roadster, disclosed a number of sacks and bottles of whiskey, brandy, and gin. (R. 37, 38.)

Upon cross-examination Ceballos was asked who gave him the information by telephone. Counsel for the Government objected that "they are the secrets of the police force, which should not be stated in a court of justice, and the stating of the source of such information would be against public policy." The objection was sustained and an exception noted. (R. 39.) Subsequently counsel for the defendants moved to suppress the evidence relating to the liquors and their seizure, on the grounds that the search was without a warrant and did not appear to have been made upon probable cause, for the reason that the seizing officer was not permitted to state the source of the telephone information which induced him to go out to look for the Buick car. The motion was overruled. (R. 43, 44.) At the close of the trial the jury found the defendants guilty as charged. (R. 5.) They were thereupon sentenced, on the first or possession count, Segurola to pay a fine of $200 and Santiago a fine of $100, and on the second or transportation count, Segurola to pay a fine of $300 and Santiago a fine

of $200. (R. 7, 8.) Upon writ of error the Circuit Court of Appeals reversed as to the first count, on the ground that the possession was merely incidental to the transportation, but affirmed as to the second count. (R. 62, 71.) A petition for rehearing was thereafter denied. (R. 71.) Petitioners now ask this Court to grant a writ of certiorari upon the following grounds:

> 1. That it was reversible error to refuse the petitioners' request for a free copy of the information.
>
> 2. That in sustaining the objection to the cross-examination regarding the source of the telephone information the courts below erred, because (a) the telephone conversation was not privileged, and (b) if it was, the privilege was waived.
>
> 3. That the evidence failed to show probable cause for the search.
>
> 4. That the evidence was insufficient to justify the conviction of the petitioner Santiago.

ARGUMENT

I

THE REFUSAL TO GRANT THE REQUEST FOR A FREE COPY OF THE INFORMATION WAS NOT ERROR

The defendants' request for a free copy of the information was based upon Section 2 of the Organic Act of Porto Rico (Act of March 2, 1917, c. 145, 39 Stat. 951), which provides:

> That in all criminal prosecutions the accused shall enjoy the right to have the

> assistance of counsel for his defense, to be informed of the nature and cause of the accusation, *to have a copy thereof,* to have a speedy and public trial, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor. (Italics ours.)

The request was denied by the District Judge (R. 5)—

> * * * for the reason that I know of no law requiring the same. The defendants and the attorney for the defendants are free at any time to examine the information, which is now in court, and to have copies thereof made at any time, as provided by law * * *.

Later at the trial, when the point was again raised by the defendants, the court said (R. 44):

> The objection is overruled for the reason that at the time that the defendants plead to the information, the information was in court and open to their inspection, and the defendants and their attorneys were informed by the court that they were at perfect liberty to examine said information in any way they desired or at perfect liberty to make copies thereof or to order the copies to be made and certified to by the clerk upon the payment of the fee as provided by law and the defendants and their attorneys have had every means of acquainting themselves with the contents of the information. The motion is overruled.

The provision in the Organic Act that the accused shall "enjoy the right * * * to have a copy" of the accusation does not mean that the copy must be furnished at the expense of the United States. Section 1033 of the Revised Statutes provides:

> When any person is indicted of treason, a copy of the indictment and a list of the jury, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each juror and witness, shall be delivered to him at least three entire days before he is tried for the same. When any person is indicted of any other capital offense, such copy of the indictment and list of the jurors and witnesses shall be delivered to him at least two entire days before the trial.

It has been held that as this statute applies to capital offenses only, it carries the inference that copies of indictments need not be furnished at Government expense in cases not capital. (*United States* v. *Van Duzee*, 140 U. S. 169.) In the same case it was indicated that the provisions of the Sixth Amendment, to the effect that—

> In all criminal prosecutions, the accused shall enjoy the right * * * to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence,

imposed no general obligation on the part of the Government to furnish at its expense copies of indictments. If there was any obligation to furnish a free copy of the information to the accused in the present case, it was a statutory obligation and not a constitutional one, but a fair construction of the statute does not support the contention that a copy should have been furnished at the expense of the United States.

The provision of Section 2 of the Organic Act provides, in the language of the Sixth Amendment, that "the accused shall enjoy the right to have the assistance of counsel for his defense." That provision of the Constitution has never been construed to impose a general obligation on the Government to furnish counsel at Government expense, and the like provision in Section 2 of the Organic Act has the same meaning and did not require that counsel be furnished at Government expense. The language respecting a copy of the accusation is identical. It is "the accused shall enjoy the right * * * to have a copy thereof." If the phrase first quoted does not mean that counsel must be furnished free, the latter phrase does not mean that a copy of the accusation shall be furnished free.

This construction is fortified by the fact that paragraph 6 of Section 8 of the Act of February 11, 1925 (c. 204, 43 Stat. 857, 858), relating to fees of clerks of the United States District Courts, and which is applicable to the United States District Court in Porto Rico, prior to its amendment on

January 22, 1927, provided that clerks should receive "for a copy of any record, entry, or other paper, and the comparison thereof, 15 cents for each folio of one hundred words," and this has been uniformly construed to require the payment by the accused for a copy of any information or indictment except in capital cases covered by Sec. 1033, R. S., and that construction has received legislative recognition in the amendment of January 22, 1927, hereafter mentioned.

The provisions of Section 2 of the Organic Act of Porto Rico, giving the accused the right to have a copy of the accusation, should not be construed to impliedly repeal the provision fixing fees of the clerks of the United States District Courts. It certainly was not intended to give the accused in Porto Rico, in cases not capital, greater consideration than was granted generally to those arraigned in District Courts in the continental United States.

In the case of *Logan* v. *United States*, 144 U. S. 263, [redacted], the Court held that the failure to deliver a copy of the indictment as specified in Sec. 1033, R. S., was reversible error. We assume that if the Organic Act of Porto Rico required that a copy of the information must be delivered to the accused at the expense of the United States at least three days before the trial, the failure to comply with the statute would be reversible error, but the provision in the Organic Act that the accused should enjoy the right to have a copy should not be construed to

compel its delivery at Government expense. It merely meant that the accused should have the right to make a copy or to obtain one on payment of the fees provided by the other statute relating to clerk's fees above referred to.

It is quite evident that there was no actual prejudice through failure to furnish a copy at Government expense. The information was brief and could have been copied by a scrivener in five or ten minutes, and was on file, open to inspection, all through the proceedings. The request for a copy at Government expense was obviously made not for the purpose of protecting any substantial right but to lay a technical foundation for reversal in the event of conviction. There is no suggestion that the accused was indigent or unable to pay the clerk's fee of 15 cents a folio (about 75¢) for the document requested.

The point is of no consequence for the future, because by Public Act No. 563, approved January 22, 1927, amending paragraph 6 of Section 8 of the Act of February 11, 1925, relating to clerk's fees in United States District Courts, it is provided:

> 6. For a copy of any record, entry, or other paper, and the comparison thereof, 15 cents for each folio of one hundred words: *Provided*, That in each criminal case not provided for in section 1033 of the Revised Statutes of the United States the clerk shall furnish each defendant, upon his request, a copy of any information filed or indictment

> returned against him, the fees for said copy and the certificate thereto, at the rates provided for by law, to be taxed as costs; but such fees shall not be demanded of any such defendant unless and until by order, judgment, or decree of the court the costs in the case are assessed against him.

This Act applies to the United States District Court in Porto Rico, and since its passage it has been the law in Porto Rico that the accused in any criminal case is entitled upon request to receive a copy of the information or indictment without payment of fees, unless in the form of costs taxed against him after conviction.

II

THE CROSS-EXAMINATION AS TO THE SOURCE OF THE TELEPHONE INFORMATION WAS PROPERLY EXCLUDED

Chief of Police Ceballos having testified for the Government on direct examination that he had gone out to look for Segurola in consequence of a confidential telephone communication that the latter was approaching with a load of liquor in a Buick car, was asked on cross-examination who had given him that information. Objection by the Government to this question, on the ground that the source of the information was confidential and should not be divulged, was sustained by the District Court. Petitioners assert that this was erro-

neous, first, because the information was not privileged, and, second, because the privilege was waived by the Government's permitting Ceballos to testify that he had received such message.

As a general rule, identity of persons giving information to officers of the law of actual or supposed law violation is a privileged matter, which is not to be disclosed. (*In re Quarles and Butler*, 158 U. S. 532.) Here it is suggested that the privilege did not exist because the witness for the United States, on direct examination, had stated that he had received a confidential telephone communication, and the accused was entitled to cross-examine him respecting that statement. The fact of the confidential telephone communication was not material in this case except as bearing on the existence of probable cause for the search of the automobile, which, in turn, bore only on the admissibility of the evidence derived from the search.

There was ample evidence of probable cause justifying the search without the confidential telephone communication. The record (pp. 23; 24) discloses that Ceballos, the officer, was in uniform and in full view of Segurola as the latter approached in his car, and that Segurola tried to run him down, and went by at high speed, and that thereafter, when Ceballos again managed to get in front of him in the public square in Carolina, Segurola was so anxious to get away that he backed his machine

into a post. The circumstances, independent of the telephone communication, were ample to warrant a man of reasonable caution in believing that Segurola was engaged in an unlawful enterprise. Furthermore, all the evidence derived from the search was admitted, so far as this record discloses, without objection. There is nothing to show that the testimony of the officers respecting the finding of the liquor in the car was objected to. The petitioners moved only to "suppress the liquors." (R. 29.) The liquor introduced was merely corroborative evidence, and as there is disclosed no dispute that contraband liquor was actually found in the car when searched, and no objection to the other evidence establishing that fact, the point is of no consequence in any way.

III

THE CONVICTION OF SANTIAGO

The final ground urged for the allowance of certiorari is that the evidence was insufficient to justify the conviction of the petitioner Santiago. Taking the stand in his own behalf, Santiago testified that he was riding in Segurola's car merely as a passenger; that he had met Segurola, whom he had known for about five years, in Fajardo, and learning that Segurola was about to go to San Juan had asked him to take the witness along; that he did not see the car being opened and did not know

whether the police found any liquor in it, and that he was not informed of the reason for his arrest until after he had been taken to police headquarters. (R. 31–34.) Chief of Police Ceballos, called in rebuttal, testified that at the time of the arrest Segurola and Santiago got out of the Buick car at his command; that the witness told Santiago that he had arrested him because he was transporting liquor, and that "Santiago was there and saw everything that happened." (R. 34.) Aside from this conflict between the testimony of Santiago and that of the Government's witness Ceballos, the District Court was clearly justified in allowing the jury to determine, from the appearance of that defendant on the stand and from the circumstances of the case, whether his story that he was merely a passenger was worthy of belief.

Furthermore, so far as the record shows, there was no motion for a directed verdict. The question of the sufficiency of the evidence as to Santiago was raised for the first time upon motion for a new trial (R. 5–7), the denial of which was not subject to review. (*Holmgren* v. *United States*, 217 U. S. 509, 521.)

CONCLUSION

The points presented are without any substantial merit; the convictions sustained by the Circuit Court of Appeals involve only petty fines; the actual guilt of one of the petitioners does not seem to be questioned, and the question of the guilt of

the other was a fair question for the jury; the case is not one justifying consideration of this Court, and the petition for certiorari should be denied.

Respectfully submitted.

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